IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.9.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.2195 to 2197 of 2006

The Commissioner of Income Tax
Trichy. .. Appellant in all appeals

Vs.

S.Muthukarupan .. Respondent in all appeals

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench Chennai dated 9.12.2005 in I.T.A.Nos.219/Mds/2003, 220/Mds/2003 and 221/Mds/2003 for the assessment years 1992-93, 1994-95 and 1996-97 respectively.

For Appellant : Mr.J.Narayanaswamy,
Junior Standing Counsel

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal dated 9.12.2005 in I.T.A.Nos.219/Mds/2003, 220/Mds/2003 and 221/Mds/2003 for the assessment years 1992-93, 1994-95 and 1996-97 respectively, raising the following substantial questions of law:

(i) Merely because as on the date of the determination of the rental value of the assessee who is one of the co-sharers of the property the rental income returned by the other co-owners were interfered with by the Department could be a ground for extending the benefit of legality to the assessee? and

(ii) In commercial business business activity, when payments were made should it be apportioned to the previous loans outstanding or to the subsequent ones?

While the first substantial question of law deals with the lease rent, the second substantial question of law deals with the interest

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attributable to loans.

2. The facts of the case, so far as they are relevant for the disposal of these appeals, are as under.

2.1. The Revenue is the appellant. For the assessment years 1992-93, 1994-95 and 1996-97, the returns of income filed by the appellant were processed under Section 143(1)(a) of the Income Tax Act (for brevity, "the Act"). On subsequent verification, the Assessing Officer found that the appellant had claimed for each of these assessment years substantial deductions under the head 'business' even though the appellant had not been engaged in any business activity. The deductions thus claimed primarily comprised interest payments which related to loans taken by the appellant from M/s.Sethu Finance and First Leasing P. Ltd., a sister concern, for the construction of his residential house at Abhirapuram, Chennai. The Assessing Officer, thus, came to the conclusion that for the assessment years referred to above income had escaped assessment and reopened all the three assessments by issuing notices under Section 148 of the Act.

LEASE RENT:

2.2.1. On the issue of lease rent, for all the three assessment years, the appellant had admitted income towards his one-sixth share in the lease rent on account of M/s.Rukmani Theatre. However, the Assessing Officer held that the net lease rents thus admitted by the appellant, i.e, Rs.6739/- for the assessment year 1992-93, Rs.7279/- for the assessment year 1994-95 and Rs.7793/- for the assessment year 1996-97 were low vis-a-vis the prevailing market rents. The Assessing Officer, noting that the lessee was none other than M/s.Sethu Cine Corporation, a firm comprising three partners, one of them being the assessee himself, discarded the lease agreement as per which lease rents had been fixed and estimated the assessee's share in the reasonable lease rent at Rs.1,50,000/-, and made additions in all the three assessments.

2.2.2. On appeal by the assessee, the Commissioner of Income Tax (Appeals), though noted that the Assessing Officer has not justified his suspicions with the help of any material or evidence, agreed that the rent as has been admitted could not be regarded as reflective of market rent and he estimated the rent at Rs.1,30,000/- for the assessment years 1992-93 and 1994-95 and Rs.1,50,000/- for the assessment 1996-97.

2.2.3. The Tribunal, on further appeal by the assessee, finding that in the case of other five co-owners, the return income from the same property has not been disturbed, held that it would be travesty of justice if the assessee, one of the co-owner, is solely picked out and an enhanced income attributed in his hands for the same property, and allowed the assessee's appeal.

INTEREST ATTRIBUTABLE TO LOANS:

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2.3.1. On the issue of interest attributable to loans, the Assessing Officer, during reassessment for these three assessment years, held that the assessee was not entitled to deduction towards interest to the extent such interest was attributable to loans taken on his residential house. As specific details were not available to work out such interest, the Assessing Officer worked out the interest in proportion to the investments made by the assessee, year after year, under various heads and allowed interest in respect of those heads in respect of which income had been offered and, disallowed the balance.

2.3.2. The Commissioner of Income Tax (Appeals), on appeal by the assessee, laid the proposition to work out allowable and disallowable interests and held that the earlier loans pending as on 31.3.1991 should be adjusted first and only later on the house loan should be adjusted.

2.3.3. The Tribunal, following the ratio laid down in (i) Kottur S.Rangaswamy Mudaliar Estate v. ITO, 42 ITD 711; and (ii) Commissioner of Income Tax v. Ashoka Charity Trust, 135 ITR 556, held that the right of attribution is available to the tax payer to arrange the matters in the way most favourable to him and allowed the assessee's appeal.

3. Aggrieved by the above common order the Tribunal dated 9.12.2005, the Revenue has filed these appeals on the substantial questions of law referred to above.

4.1. Issue: (1) - Merely because as on the date of the determination of the rental value of the assessee who is one of the co-sharers of the property the rental income returned by the other co-owners were interfered with by the Department could be a ground for extending the benefit of legality to the assessee?

4.2. As far as the issue of lease rent is concerned, according to the assessee the property concerned belongs to six co-owners and in case of five other owners, the return income has not been distributed.

4.3. In Jaswant Rai v. Commissioner of Wealth Tax, 107 ITR 477, it was held that determination of the value of property by adopting one method may vary the estimate made by adopting another method. The principle that if the language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt that interpretation which favours the assessee, applies with full vigour to a case in which different values of the name property are arrived at by adopting different methods. In such a situation, it is fair and proper that the benefit of the method which is most favourable to the assessee should be allowed to him and the choice of the method to be adopted for determining the value of property should be left to the assessee, and that under the Wealth-tax Act, 1957, the incidence of taxation is the ownership of net wealth. If during the same assessment year the same quantity of wealth in possession of one-co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a

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similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned, it would militate against the principle of equality of laws enshrined in Article 14 of the Constitution of India.

4.4. In the case on hand, the Tribunal, after considering the facts and circumstances of the case and the materials available on record, held that the revenue has not reverted to the fixation of lease rent in case of other five co-owners with respect to the same property and that it would be travesty of justice if the assessee, one of the co-owner, is solely picked out and an enhanced income is attributed in his hands for the same property, which, no doubt, in our considered opinion, is purely a question of fact.

4.5. Of course, a question of fact becomes a question of law, if the finding is either without any evidence or material, or the finding is contrary to evidence or is perverse or there is no direct nexus between the conclusion and the facts upon which that conclusion is based. A perverse finding is a finding where there is no evidence to support it or it is based on material which is irrelevant or partly relevant and partly irrelevant or it is based on conjectures or surmises or partly on these and partly on evidence, or a finding which is so perverse and unreasonable that no person acting judicially and properly instructed in law would have arrived at it. The finding recorded by the Tribunal that it would be travesty of justice if the assessee, one of the co-owner, is solely picked out and an enhanced income is attributed in his hands for the same property, was based on a correct appreciation of evidence and therefore, no question of law arises from the order passed by it.

5.1. Issue: (2) - In commercial business business activity, when payments were made should it be apportioned to the previous loans outstanding or to the subsequent ones?

5.2. The second issue raised in these appeals pertains to the disallowance of the interest claimed by the assessee under the head "business". The Assessing Officer as well as the Commissioner of Income Tax (Appeals) held that the payments made by the assessee, when there are more than one loan outstanding can only be credited in the first loan in the commercial business reality and therefore, the claim of the assessee that the previous loans stand unpaid and what has been paid only in relation to the subsequent loans deserves to be rejected. However, the Tribunal, held that the right of attribution is available to the tax payer to arrange the matter in the way most favourable to him and allowed the assessee's appeals.

5.3. The doctrine of attribution has been emphatically dealt with by Lord Wright in Paton v. IRC 21 TC 626, as under:

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"...In the ordinary course, a person paying interest does not generally appropriate the payment to income or to any particular piece of income or any specific asset : he has the general body of available funds, say his banking a/c, if he has only one, and he pays by drawing on that a/c, which may include income, borrowed money, capital and so forth. This is what is meant by payment out of a mixed fund, or payments made out of the general till, or payments made neutrally. The Revenue authorities have no right in such cases to appropriate those payments to non-taxable rather than taxable moneys. Hence the tax-payer is given the right of attribution in the way most favourable to himself. It is presumed in the absence of evidence to the contrary that payments are made out of income."

5.4. In this connection we may here highlight the fact that the Calcutta High Court in the case of CIT v. Ashoka Charity Trust [1982] 135 ITR 556, took a similar view and held that even though the assessee received voluntary contributions from non-charitable institutions, the expenditure incurred should be considered to have been met from the income derived from property held by the assessee under trust.

5.5. In the instant case, the Tribunal based on the material and evidence available on record, allowed the assessee's appeal on this issue and held that the right of attribution is available to the tax payer to arrange the matters in the way most favourable to him, and the said view, in our considered opinion, does not suffer from legal infirmity to warrant interference. In view of the above, no substantial question of law arises for consideration of this Court.

In the result, these appeals are dismissed. No costs. Consequently, M.P.No.1 of 2006 in T.C.No.2196 of 2006 and M.P.No.1 of 2006 in T.C.No.2197 of 2006 are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench 'C'
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090

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2. The Commissioner of Income Tax,
   Tiruchirapalli.

3. The Commissioner of Income-tax (Appeals),
   Tiruchirapalli-620 001.

4. The Asst. Commissioner of Income Tax,Circle -III
   Tiruchirapalli.

5. The Commissionr of Income Tax-I,
   Tiruchirapalli.

6. The Addl. Commisioner of Income Tax,
   Special Range, Tiruchirapalli-1.

1 CC TO MR.N. MURALI KUMARAN, ADVOCATE SR 42095

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